Hall's Int. Law, 5th ed., 173, 212, and when two vessels of the same nation collide on the high seas the law of that nation will be applied even in a foreign court. *The Scotland* (1881) 105 U. S. 24. Under our statutes a vessel must be registered in the port nearest the domicil of its owners in order to acquire the privileges and protection of our laws, U. S. Rev. St. §§ 4131, 4141, but the effect of the laws of the State of registry does not seem to be clearly determined. Jurisdiction in admiralty is vested in the federal government by the Constitution, Art. III, Sec. 2, and a State law cannot supersede a federal statute, even though it applies to acts within the territorial jurisdiction of the State. *Butler* v. *Boston S. S. Co.* (1888) 130 U. S. 527. The passing of title to maritime property is regulated by the State law, *Crapo* v. *Kelly* (1872) 16 Wall. 610, but such a law cannot abrogate rights under the general maritime law. *Workman* v. *New York* (1900) 179 U. S. 552. State laws granting maritime liens may be enforced in admiralty courts, *The Lottawanna* (1824) 21 Wall. 558, as may State statutes regulating the fees of pilots, even though the right to the fee be acquired outside the territorial limits of the State. *Cooley* v. *Port Wardens* (1851) 12 How. 299; ex parte *McNiel* (1871) 13 Wall. 236. In *Crapo* v. *Allen* (1849) Fed. Cas. 3360, it is suggested that these latter are contractual or property rights and so subject to State laws; but under the ruling in *Workman* v. *New York*, supra, it would seem that even such a right could not be controlled by the State in contravention of the general maritime law, see 4 COLUMBIA LAW REVIEW 589, nor does the distinction by which the court in that case denies a tort right created by State statute seem satisfactory. In England Lord Campbell's Act has been held not to apply to admiralty, *The Vera Cruz* (1884) 10 App. Cas. 59, but that decision seems to have turned on the construction of the statute, and in this country statutes following that Act have been applied in several instances. *Holmes* v. *Railway Co.* (1880) 5 Fed. 75; in re *Long Island Trans. Co.* (1881) 5 Fed. 599. In these two cases the tort was committed within the territorial limits of the States, but that fact could not determine the federal jurisdiction incident to admiralty practice, as distinguished from State control, and in *The E. B. Ward, Jr.* (1883) 17 Fed. 456, such a State statute was applied to a tort committed on the high seas.

The Supreme Court has not yet passed on this question, but it seems to be a sound principle that while a State cannot impose restrictions on the jurisprudence of federal courts, rights created by the State, not in conflict with that jurisprudence, may be enforced in a federal court, even though for jurisdictional reasons only that court can act. *Holmes* v. *Railway*, supra. This is a well settled rule of federal practice in equity and common law courts, 1 Foster's Fed. Prac., 2nd ed., § 7, and there seems to be no reason why it should not be applied in admiralty.

ULTRA VIRES ACTS OF CORPORATIONS.—Precisely what is the status of an ultra vires contract is not as yet well settled. Where the contract remains executory and is ultra vires in the proper sense, that is, entirely beyond the scope of the powers of the corporation,

no action can be maintained on the contract itself and whatever remedy is sought must be had in quasi-contract. *White* v. *Franklin Bank* (1839) 22 Pick. 181. In England an ultra vires contract is treated as absolutely void because such a contract is regarded as contrary to law. Nor can a subsequent ratification by stockholders validate the transaction. *Ashbury Ry. Carriage Co.* v. *Riche* (1875) L. R. 7 E. & I. A. C. 653. The Supreme Court of the United States reach the same result in similar cases but upon quite other grounds, and the recent case of the *Anglo-American Mortgage Co.* v. *Lombard* (1904) 132 Fed. 721, is typical of these decisions. In that case a Kansas corporation, considerably indebted, turned over its assets, management and control to a Missouri corporation, under a guaranty by the latter of all the former's indebtedness. This assumption of control was ultra vires of the Missouri corporation and upon its becoming insolvent, the stockholders of the Kansas corporation who had transferred all their stock, were held liable under the laws of Kansas for the debts of the Kansas corporation. The whole transaction was treated by the court as void and a mere nullity. The court follows in its language and reasoning the earlier case of *Central Transportation Co.* v. *Pullman's Palace Car Co.* (1891) 139 U. S. 24, which clearly announces the doctrine of special powers. According to this decision an ultra vires contract is void not because it is forbidden but because the corporation has not the capacity to make it. The legislature by enumerating the powers given, by implication excluded all others, and when the corporation attempts to act beyond these powers its acts are mere nullities. The act thus being void ab initio cannot be validated by any subsequent ratification, and there can therefore be no ground for the operation of estoppel. *California Bank* v. *Kennedy* (1897) 167 U. S. 362.

Starting with the proposition laid down by Chief Justice Taney in *Bank of Augusta* v. *Earle* (1839) 13 Pet. 519, that a corporation derives all its powers from the sovereign and cannot exist beyond the bounds of the sovereignty of its origin, the logic of this decision is convincing. There are, however, many decisions giving force and effect to ultra vires contracts. If they are fully performed on both sides there is probably no jurisdiction which at the suit of either party would open up the transaction. *Long* v. *Railway Co.* (1890) 91 Ala. 519. The difficulty arises where the contract has been partially performed. Many courts do not leave the parties to their remedies in quasi-contract, but for the part performed allow a recovery on the contract itself. *Boyd* v. *American Carbon Block Co.* (1897) 182 Pa. St. 206; *Bath Gas Light Co.* v. *Claffy* (1896) 151 N. Y. 24. Decisions of this nature must perforce of the results reached attribute greater powers to a corporation than those expressly enumerated. In fact, corporations are assimilated to individuals in their power to contract and it is stated that an individual acts ultra vires when performing acts forbidden as to him. Morawetz on Private Corporations, 2nd ed. 700. The objection to this doctrine of general powers, which at the present time is the prevailing one, is that it gives to a corporation in the face of a specific enumeration, powers clearly not granted. It produces a result, in some respects at least, anomalous; that the validity of a contract may be determined according as the State, an

outside party, or the stockholder is the complaining party. It seems a departure from the conception of the corporation as an entity deriving all its power and authority from the sovereign, and regards the corporation rather as an association exercising by permission the prerogatives of an artificial person.

AIDER BY VERDICT IN CRIMINAL CASES.—The New York Court of Appeals has recently held that an indictment which does not allege facts constituting a crime will be good after verdict and judgment provided the defendant fails to object in the manner prescribed by the Code and provided the facts necessary to constitute the crime intended to be charged appeared upon the trial. *People* v. *Wiechers* (1904) 179 N. Y. 459.

The principle of aider by verdict is of ancient application at common law in civil cases, *Skinner* v. *Gunton* (1681) 1 Wms. Saund. 228; *Ladd* v. *Pigott* (1885) 114 Ill. 647, and is an exception to the general rule that a declaration which does not state a cause of action cannot be cured by verdict. *Chichester* v. *Vass* (Va. 1797) 1 Call 71; *Dale* v. *Dean* (1844) 16 Conn. 579. It has been suggested that this exception originally had no application to criminal cases in England, *King* v. *Mason* (1788) 2 D. & E. 581; but this is doubtful, *Hancock* v. *Baker* (1800) 2 B. & P. 260, and in a modern case, *Heyman* v. *Queen* (1873) 12 Cox C. C. 383, it was held that an indictment which did not charge a crime could be aided by a verdict rendered upon proof of all the necessary facts. This represents the English law to-day. Since both at common law, 1 Bouv. Law Dict. 1018, and by statute, an instrument which does not charge a crime is not an indictment, *People* v. *Dumar* (1887) 106 N. Y. 502, these English cases can be supported only by holding that the right to trial upon indictment may be impliedly waived. If the right cannot be waived, neither may it be said that facts appearing on the trial will relate back to and cure a merely colorable indictment, since a fiction is never invoked to work a wrong. Purely personal rights granted by statute or common law are held to be susceptible of waiver unless some question of public policy intervenes, *Matthew's Case* (1868) 18 Gratt. 989, but in England the right to a trial by equals was held to be incapable of waiver because secured by Magna Carta. *Lord Dacre's Case* (1535) Key. 56; 2 Wooddeson, Lectures 581. The requirement that trials shall be upon indictment is generally found in the constitutions in this country, and while all constitutional rights are not incapable of waiver, it seems that they must clearly appear to be only personal privileges for this to be allowed. *Cancemi* v. *People* (1858) 18 N. Y. 128; see *Edwards* v. *State* (1883) 45 N. J. L. 419. The New York Constitution Art. I, Sec. 6, provides in mandatory language that "No person shall be held to answer for a crime unless on presentment or indictment," while, by contrast, the language of other clauses in the same section seems more nearly permissive, and in Mississippi, under a similar constitutional provision, the court held that this right could not be waived. *Newcomb* v. *State* (1859) 37 Miss. 383.

It would seem that the constitutional restriction goes to the jurisdiction of the court, and jurisdiction cannot be broadened by any act